IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 4729 of 2003(A)

CC.329/2002 of JUDL. MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

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PETITIONER: ACCUSED

A.L.PREMARAJ, S/O.APPU, LANKAYIL VEEDU, KARASSERY.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. SUB INSPECTOR OF POLICE, KUNNAMANGALAM POLICE STATION, KOZHIKODE.

2. RAGHAVAN NAIR, S/O.GOPALAN NAIR, RAGAM HOUSE, CHATHAMANGALAM AMSOM, MALAYAMMA DESOM, KUNNAMANGALAM.

3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 4729 OF 2003

Dated this the 23rd day of November 2006

ORDER

The petitioner, who is the accused in C.C. No. 329/2001 in the file of Judicial First Class Magistrate, Kunnamangalam, with respect to the offence under section 420 I.P.C., has sought for setting aside the proceedings. It is the case of the petitioner that the defacto complainant had filed two cases under section 138 of the Negotiable Instruments Act with respect to the two post dated cheques. Both the cases had ended in acquittal vide Annexure D and E. Thereafter, the complainant has initiated the present proceedings. It is the specific case that the cheques issued were dishonoured and in view of the decision of this court in **Sreethara Kamath v. Jawala Prasad Gupta** (1970 KLT 45), **Chary v. Martin** (1982 KLT 427) and **Shadili v. Uthaman** (1988 (2) KLT 191) only civil relief can be sought. It is further mentioned that petitioner is suffering from acute cancer and that he cannot speak or attend his normal duties. The petitioner has

produced the certificates issued from the Cancer Institute, Chennai and Tata Memorial Hospital, Mumbai. The petitioner has submitted that in view of the disposal of the 138 cases the proceedings initiated would not be maintainable. At the time of hearing the counsel suggested that the matter can be relegated to the trial court.

In the circumstances, the Crl. M.C is disposed of with a direction that the petitioner may apply before the court below for discharge. The court shall consider the above contention and dispose of the application on merits. Taking into consideration the fact that the petitioner is suffering from terminal disease the petitioner may apply for exemption from appearance before the court below and same shall be allowed. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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